

March 23, 2004

The Honorable Betsey L. Patten, Chairman
Municipal and County Government Committee
Room 301, Legislative Office Building
Concord, NH 03301

Re: Senate Bill 467, establishing an exemption from the public sewer connection requirements for 2 projects in the town of Derry

Dear Chairman Patten:

Thank you for the opportunity to comment on SB 467. This bill would establish an exemption from the public sewer connection requirements of RSA 147:8 for two projects in the Town of Derry whose primary purposes are to serve the site of the proposed Barkland Acres school and the South Range school. The Department of Environmental Services (DES) supports this bill as amended by the Senate.

Municipal wastewater collection and treatment facilities are planned, designed and constructed – at considerable public expense - to serve the largest community practicable, i.e. all properties reasonably needing and capable of receiving sewer service. The broad and mandatory connection by all potential users of a sewer system is necessary to achieve public health protection at an affordable cost. In this regard, please note that federal and state funding programs require that municipal sewerage projects reasonably provide for future needs of the entire community. Indeed, a landmark decision by the NH Supreme Court relative to sewer connection requirements held that "The proper disposal of sewage is an interest shared by the entire community, which should not be undermined by the failure of a few to conform...". See *State v. Kunze*, 110 N.H. (1970). In this context, we should err on the side of caution in the long term to ensure that the public health and environment are protected by the effective use of municipal sewerage systems.

SB 467 proposes to enable the Town of Derry to grant waivers for "*any property with adequate alternative sewage disposal systems which comply with applicable state and local regulations within 125 feet*" of two proposed new sewers. Currently, RSA 147:8 in part requires connection to sewer if a property is within 100 feet and also enables municipalities to grant waivers "*to the requirement of connection to the public sewer for properties with adequate alternate sewage disposal systems which comply with applicable state and local regulations, designed by a designer licensed in New Hampshire and approved for construction by the New Hampshire department of environmental services after January 1, 1985.*" In effect, SB 467 seeks to extend this local waiver authority to properties near these two projects with on-site sewage disposal systems installed before January 1, 1985 for properties within 125 feet of the

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sewers. The Department finds this acceptable for these unique projects provided that the adequacy criteria applied by the town are at least equal to those for newer construction based on individual waiver determinations for each property by the town.

Properties located in proximity to the two sewer projects in Derry are currently served by conventional septic/leach systems. Such disposal systems have a limited design life and inevitably will fail, thereby necessitating system replacement or, preferably, connection to municipal sewer. The amended bill recognizes and provides for this eventuality.

Thank you again for the opportunity to comment. Please call me at 271-3503 or John Bush at 271-2001 if you have any questions or need additional information.

Sincerely yours,

Michael P. Nolin
Commissioner

cc: Senators Sapareto, Gallus
Representatives P. Katsakiores, Wiley, Rauch, G. Katsakiores, Gleason